IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 644 (MS) OF 2006

1. Bhag Singh, S/o late Dalib Singh,
   R/o Central School Manera, Uttarkashi.
2. Bharat Singh, S/o late Dalib Singh,
   R/o Village Balabala, District-Dehradun.

.....Petitioner

Versus

1. The District Judge, Uttarkashi.
2. Kirat Singh, S/o Shri Narayn Singh,
   R/o Village Gairy (Rajputon Walee) Patti Raunad Ramoli, Tehsil Pratap Nagar, District Tehri Garhwal.
3. Jagat Singh, S/o Mangal Singh,
   R/o Village Gairy (Rajputon Walee) Patti Raunad Ramoli, Tehsil Pratap Nagar, District Tehri Garhwal, Presently R/o Jogath Talla, Patti Dichju, Tehsil Dunda, District-Uttarkashi. .....Respondents.

Dated: 09.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri P.C. Jhingan, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order-dated 29.03.2006 (Annexure No.4) passed by the District Judge, Uttarkashi.

Briefly stated, a suit for permanent injunction being Suit No. 39 of 2005 was filed by the petitioner praying for restraining the respondent no. 2 and 3 from interfering in the possession of the petitioner over the land in dispute. The notice of the case was served on the respondent no. 2/defendant no. 1 on 01.02.2006 in which 13.02.2006 was

fixed for filing objection by the defendant no. 1. The District Judge has passed the order to proceed ex parte against the respondent no. 2/defendant no. 1 on 13.02.2006. 29.03.2006 was fixed for disposal of the application under Order 39 Rule 1 and 2 C.P.C. of the plaintiff/petitioners. Respondent no. 2/defendant no. 1 filed an application under Order IX Rule 7 C.P.C. for recalling the order dated 13.02.2006 by which order has been passed to proceed ex parte alleging that he was ill due to which he could not appear on 13.02.2006. The petitioner has filed his objection with affidavit with the paryer that the application under Order 9 Rule 7 CPC filed by the respondent no. 2 may be dismissed with costs.

The District Judge, Uttar Kashi respondent no. 1 set aside the order dated 13.02.2006 to proceed ex parte against the respondent no. 2 with cost of Rs. 300.00.

The petitioner has challenged the said order by way of the present writ petition.

It is well settled that where notional order has been passed and only an order has been passed to proceed ex parte, on 31th February, 2006 and the application having been filed during the proceedings of the case, the same may be considered as there should not be any prejudice to the parties and if he should be given full opportunity to participate.

In ***N. Balakrishnan Vs. M.Krishnamurthy, 1998 S.C.F.B. and Rent Cases pages 427,*** It has been held that law of limitation is founded in public policy on '*the maxim of interest reipublicae up sit finis litium*' i.e. fall the general welfare, it has been held as under:-

> *" The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is*

not because on the expiry of such time a bad cause would transform into a good cause".

Relying upon the cases of ***R. v. Camborne Justices All England Law Reports (2) 850,*** it has been held in ***international Airports Authority of India Vs. K.D. Bali (1988) 2 SCC 360*** as under:-

"While indorsing and fully maintaining the integrity of the principle 'justice should not only be done, but should manifestly be seen to be done', it is important to remember that the principle should not be done than it should in fact be done."

Law Lexicon defines 'justice' as under:-

"Justitia est constans et perpetua voluntas just suum cuique tribuendi: justice is the constant and perpetual disposition or will of giving to every man his right"

In view of the above, the writ petition lacks merit and is dismissed. No order as to costs.

(Rajesh Tandon, J.)

09.06.2006
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